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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,443	05/25/2001	Kelly Gravelle	111039.00216	2653
27557	7590	10/19/2006	EXAMINER	
BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE, N.W. WASHINGTON, DC 20037			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,443

Applicant(s)

GRAVELLE, KELLY

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 4/27/2006, which was received 7/27/2006. Acknowledgement is made that there were no amendments to the instant application. The examiner has considered applicant's remarks and concurs with applicant's conclusion in regards to the Elliott reference, the rejection has been corrected accordingly. In regards to the rejection on the merits, applicant's arguments were not persuasive, therefore the previous rejection is restated below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al. (6,026,375), in view of Kuykendall and further in view of Elliott.

In regards to claims 1-31, Hall teaches all the claimed features related to a mobile ordering system that schedules an order over the Internet and allows payment of same for pickup at a prescribed time, but does not specifically mention the features

related to the use of a wireless tag. Kuykendall teaches a system that allows a McDonalds customer to pay using California's Fastrak toll- payment transponders. It would be obvious to a person of ordinary skill in the art to include the wireless tags as a payment/arrival indicator as taught by Kuykendall, because this would increase the speed of delivery at the point of pickup.

The combination of Hall and Kuykendall teaches all the features of the instant claims with the exception of using the RF tag to place the customer in a queue at the restaurant. Elliott teaches using an RF transponder to locate a vehicle in a line and provide information regarding where in the queue the customer's vehicle is in relation to other. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Hall/Kuykendall the queuing using an RF tag because this will prevent confusion by providing a means by which each vehicle is associated with each item delivered regardless of whether or not the RF tag is used of the conventional order window (Elliott col 4, lines 45-55).

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Elliott (US 6366220).

In regards to claims 1-31, Elliott teaches all the elements of the instant invention. For instance, Elliott discloses a system and method are provided that allow a customer

to order drive-through menu items using an RF tag (104). A customer vehicle (102) is equipped with a radio frequency RF tag (104). Prior to placing an order, the customer opens an account and creates a default menu using a food vendor's web site. To order items from the default menu, the customer approaches a drive-through order station (312) at a fast food vendor location (318). As vehicle 102 passes order station (312) a first transponder (110A) queries RF tag (104) and processes a return signal (114). Identification information is extracted from return signal (114) such that the customer's order, consisting of the default menu items, is prepared. The customer's vehicle 102 then approaches pick-up station (316) and a second transponder (110B) queries RF tag (104) and subsequently bills the customer's account for the ordered items.

Response to Arguments

Applicant argues that the combination does not teach "queuing the vehicle at the pickup location in accordance with the tag identification number" Since there is no specific definition available for queuing in the applicant's specification the examiner will use the broadest reasonable interpretation and define queuing as in Webster's Dictionary to be "a waiting line esp. of persons or vehicles. The examiner based on this definition disagrees with the applicant and directs the applicant's attention to col 4, line 40-col 5, line 60, where it is clearly taught that a customer being identified and associated with an RF tag is located in a line (queued) along with other such as those that do not have tags.

Further, applicant goes on to state that Elliott has only a single drive through lane. The examiner has reviewed applicant's specification and finds the use of queuing in two locations, one dealing with orders and another in the second to last paragraph, where it is discussed that the RF tags are utilized to queue. There does not appear to be support for applicant's allegation that there are multiple lanes used in a queuing process, that is, there is mention of multiple lanes but no support for the use of queuing in those multiple lanes.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at
571.272.3600

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Fadok
Primary Examiner